he was in Singapore for some temporary purpose. This again is a matter for the determination of the Board of Review.

As to the point raised by junior counsel for the defendant relating to the service or posting of the notices of assessment, it is not alleged in any of the affidavits filed by or on behalf of the defendant that there was any undue delay on the part of the plaintiff in the matter. In any event, it was decided in *A.B.C.* v. *The Comptroller of Income Tax* [2] that on the basis that the assessments in that case were valid, notices of assessment might be issued at any time.

I am satisfied that there is no question of fact or law which ought to be tried or argued in this case. The defendant has not shown that he has a fair case for defence or reasonable grounds for setting up a defence. There is in fact no arguable defence in this case. In my opinion the learned Registrar came to a correct decision in law. The appeal is accordingly dismissed and the plaintiff is to be at liberty to sign final judgment against the defendant for the sum of $303,555 and costs being the costs of the proceedings before the Registrar and of this appeal to be taxed.

Appeal dismissed.

Solicitors: *Rodyk & Davidson; Hilborne, Chung & Co.*

PUBLIC PROSECUTOR v. GOULD

[A.Cr.J. (Rose C.J.) May 27, 1962]

[Singapore — Magistrate's Appeal No. 47 of 1962]

Road traffic accident — Negligent driving — Information under s.30(1)(a) of the Road Traffic Ordinance (Cap. 227) — Admissibility of — Criminal Procedure Code (Cap. 232), s.121(5)(a).

Criminal Law and Procedure — Admissible evidence — Information to police under s.30(1)(a) — Road Traffic Ordinance (Cap. 227).

The respondent's motor-car struck a pedestrian and inflicted injuries from which the man died. The driver of the car did not stop after the accident but the car number was noticed by a taxi driver who was in the immediate vicinity of the accident. The respondent who was the registered owner of the car was questioned by the police but he declined to give particulars of the driver and the vehicle as required under section 30(1)(a) of the Road Traffic Ordinance. When his attention was drawn to the fact that if he failed to give the required information within seven days he would be guilty of an offence, the respondent admitted that he himself was the driver of the vehicle on the occasion in question. At his trial before a District Judge on a charge of causing the death of the pedestrian by a negligent act not amounting to culpable homicide, to wit, by driving a car negligently, the prosecution sought to put in evidence the admission made to a police officer by the respondent under section 30(1)(a) of the Road Traffic Ordinance. The learned District Judge ruled that such admission was inadmissible in evidence and as there was no other evidence before the court as to the identity of the driver of the vehicle in question, the respondent was acquitted and discharged. The Deputy Public Prosecutor appealed against the order of acquittal.

Held: (1) a charge of causing the death of a person by doing a negligent act not amounting to culpable homicide, to wit, by driving a motor-car negligently is a charge which relates to "an offence in connection with the driving of a motor-vehicle" within the meaning of subsection (2) of section 30 of the Road Traffic Ordinance;

(2) the fact that a police officer points out or brings to the attention of the respondent the provision of section 30(1)(a) of the Road Traffic Ordinance does not amount to a threat within the meaning of the proviso to section 121(5) of the Criminal Procedure Code as amended by the Criminal Procedure Code (Amendment) Ordinance, 1960, as the alleged threat is no more than the calling of the respondent's attention to a provision of the law with which it is his statutory duty to comply;

(3) information given to a police officer under section 30(1)(a) of the Road Traffic Ordinance is admissible in evidence at the hearing of a charge when such charge relates to any offence in connection with the driving of a motor-vehicle and it matters not whether the offence in question is under the Road Traffic Ordinance or under some other Ordinance, so long as the offence in question is "in connection with the driving of a motor-vehicle".

Cases referred to:—

(1) *Bingham* v. *Bruce* [1962] Cr. L.R. 114.

(2) *Hennell* v. *Cuthbert* [1962] Cr. L.R. 105.

MAGISTRATE'S APPEAL.

Abdul Wahab Ghows (Senior Crown Counsel) for the appellant.

N. A. Christopher for the respondent.

Cur. Adv. Vult.

Rose C.J.: This matter arises out of a road accident in which a motor car BD. 7604, the property of the respondent, struck a pedestrian in Upper Serangoon Road and inflicted injuries from which the man died.

The accident took place at about 11.25 p.m. on the 18th January, 1962.

The driver of the car did not stop after the accident but fortunately the number of the car was noticed by the driver of a motor taxi which was in the immediate vicinity of the accident.

The car was substantially damaged on the front nearside and in addition there were bloodstains on the damaged headlamp reflector on the nearside. This considerable damage would no doubt have become apparent if and when the driver examined the car upon his return home; and on the following morning the respondent went to the police station to report that there had been an occurrence in a street of which he did not know the name when he thought some object had been thrown at his motor-car.

It is not disputed by learned counsel for the respondent that it was the respondent (the registered owner) who was driving the car at the time of the accident, the whole matter upon which the respondent relies being the purely technical consideration that there was no admissible evidence before the District Judge that the respondent was in fact the driver of the car.

It was upon this ground that the learned District Judge held that there was no case to answer and acquitted the respondent.

On the afternoon of the day following the accident in response to an invitation from the police the respondent, accompanied by his advocate, Mr. Christopher, proceeded to the police station and declined to give the particulars of the driver of the vehicle as required under section 30(1)(a) of the Road Traffic Ordinance which reads as follows:—

"30.–(1) When the driver of a motor vehicle is alleged or is suspected to be guilty of an offence under this Ordinance or any rules made thereunder—

(a) the owner of the motor vehicle shall give such information as he may be required by any police officer not below the rank of Inspector to give as to the identity and address of the person who was driving the said motor vehicle on any specified occasion and as to that driver's driving licence and if he fails to do so within seven days of the date on which such information was required of him shall be guilty of an offence against this Ordinance unless he shows to the satisfaction of the court that he did not know and could not with reasonable diligence have ascertained the information required;".

According to Mr. Christopher's contention the respondent only gave the required information — that he himself was the driver of the vehicle on the occasion in question — when his attention was drawn to the fact that if he failed to give the required information within seven days of the date of the request he would be guilty of an offence.

Mr. Christopher now prays in aid proviso, (a) to section 121(5) of the Criminal Procedure Code as amended by the Criminal Procedure Code (Amendment) Ordinance, 1960, relating to the admissibility of statements to the police. Proviso (a) reads as follows:—

"Provided that no such statement shall be admissible or used as aforesaid—

(a) if the making of the statement appears to the court to have been caused by any inducement, threat or promise having reference to the charge against such person, proceeding from a person in authority and sufficient in the opinion of the court, to give such person grounds which would appear to him reasonable for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him;".

It is Mr. Christopher's contention that the fact that the police officer pointed out or brought to the attention of the respondent the provisions of section 30(1)(a) of the Road Traffic Ordinance amounted to a threat within the meaning of the proviso to this subsection.

It is to be noted that the threat which is alleged to have been made on this occasion is no more than the calling of the respondent's attention to a provision of the law with which it was his statutory duty to comply, and with which, incidentally, his advocate was no doubt familiar.

It is to be noted that subsection (2) of section 30 of the Road Traffic Ordinance provides in perfectly general terms that information given under subsection (1) of the section may be used as evidence at the hearing of the charge. The respondent was charged with "causing the death of one Pakari s/o Kasinathan. . . . by doing a negligent act not amounting to culpable homicide, to wit, by driving motor-car BD. 7604 along Upper Serangoon Road .....".

It is therefore to my mind quite clear that the charge in support of which this evidence was sought to be adduced related to "an offence in connection with the driving of a motor vehicle" within the meaning of the subsection which reads as follows:—

"(2) Notwithstanding anything in any other Ordinance contained any information given under this section by any person charged with any offence in connection with the driving of a motor vehicle may be used as evidence at the hearing of the charge."

A point was made by Mr. Christopher, which appears to have impressed the learned District Judge in that he refers to it in the last paragraph of his Grounds of Decision, which I must confess I am unable to appreciate. Mr. Christopher's contention is that there was under the original Road Traffic Ordinance a *lacuna* in regard to this matter of hit and run drivers which was filled by the proposed Ordinance, which has not yet come into force, repealing and re-enacting the Road Traffic Ordinance (Chapter 227 of the Revised Edition). Mr. Christopher referred me to section 32(2) of the proposed amending Ordinance (No. 26 of 1961) which reads as follows:—

"(2) Notwithstanding any other written law to the contrary, any information given under this section by any person charged with any offence under this Ordinance or any rules made thereunder or any offence in connection with the driving of a motor vehicle may be used as evidence at the hearing of the charge."

The argument, so far as I am able to apprehend it, is that the new subsection is general enough to cover an offence under section 304A of the Penal Code, while the existing subsection (2) is not.

I consider that there is no substance in the point. As I have already intimated, it seems to me to be clear that if a person is charged with *any* offence in connection with the driving of a motor vehicle the provision of the subsection is applicable and that it matters not whether the offence in question is under the Road Traffic Ordinance or under some other Ordinance, so long as the offence in question is "in connection with the driving of a motor vehicle."

I am reinforced in this view by a consideration of the purposes of the legislative provisions in question. They are demonstrably intended to cover the case of a hit and run driver, a class of person who I would say in passing deserves little sympathy from the courts.

In the course of the argument I was referred by learned Crown Counsel to the February issue of *The Criminal Law Review* in which reference is made on page 114 to the case of *Bingham* v. *Bruce* [1]. Lord Parker C.J. appears to have made the observation: "The clue is that the driver is unknown and the object of the section is to discover his identity." The comment at page 105 of the same issue in regard to the case of *Hennell* v. *Cuthbert* [2] reads as follows:—

"In the present case, it would appear from *Bingham* v. *Bruce*, below, page 114, that the accused was under a statutory duty to answer questions as to the identity of the driver; and, therefore, that the questions were unobjectionable."

It would surely seem that a moment's consideration must show that the view taken by Lord Parker in dealing with an analogous although not identical provision of the law is indubitably right. Otherwise protection is afforded and encouragement given to the hit and run driver, who by his escaping from the scene is very likely to escape responsibility for his actions. In the great majority of cases involving a hit and run driver, while his vehicle may be identified by some by-stander who is sufficiently alert to note the number, the chance of identifying the driver of a rapidly disappearing vehicle must be indeed remote. It is to block this loophole of escape that this particular provision of the law is designed.

It was for these reasons that I ordered that the appeal should be allowed and the case referred to the District Court for hearing and completion according to law.

Appeal allowed.

S.T.U. v. THE COMPTROLLER OF INCOME TAX

[A.C.J. (Tan Ah Tah J.) May 31, 1962]

[Singapore — District Court Appeal No. 19 of 1960]

Income Tax — Assessment — Remittances arising out of property abroad — Whether capital — Whether taxable.

Evidence — Explanations not supported by documentary evidence — Not necessarily ground for rejection.

This was an appeal from a decision of the Board of Review by which certain assessments made by the Comptroller were confirmed. The assessments were made in respect of what were called unsubstantiated credits in the appellant's personal account with K. H. Ltd., remittances received by the appellant in Singapore and certain other items which were alleged to be chargeable income. According to the evidence the remittances in question arose out of the sale of appellant's property which was in Shanghai and proceeds of which were transferred to Hongkong and from Hongkong to Singapore.

Held: the remittances were capital in nature and therefore could not be taxed as income.

In this case certain explanations given by the appellant to the Officers of the Income Tax Department were rejected on the ground that there was no documentary evidence to support them.

Held: documentary evidence can in many cases be very cogent and convincing, but the lack of it, however, should not invariably be a reason for rejecting an explanation.

INCOME TAX APPEAL.

G. S. Hill for the appellant.

Lim Chor Pee (Crown Counsel) for the respondent.

Tan Ah Tah J.: This is an appeal from a decision of the Board of Review by which certain assessments, additional assessments and amended assessments made by the Comptroller of Income Tax, while declared to be excessive to some extent, were confirmed in part by the Board.

The assessments were made in respect of what were called unsubstantiated credits in the appellant's personal current account with a company called K. H. Ltd., remittances received by the appellant in Singapore and certain other items which were alleged to be chargeable income. There is no doubt that the Comptroller thought that the appellant's wealth had increased and that he had been making what were called secret profits from some undisclosed source.

According to the evidence given by and on behalf of the appellant before the Board of Review, the appellant was born in China and came to Singapore in 1926. He commenced to do business in Singapore and also in Indonesia. When certain business concerns in which he was interested were wound up he received a sum equivalent to about HK $560,000. Subsequently, the appellant used HK $460,000 being part of the sum of HK $560,000 to start a business in Shanghai under the style of K. H. H. The balance of HK $100,000 was left in Hong Kong and was there used to start a business also known as K. H. H. When the war with Japan broke out in December 1941 the appellant was in Hong Kong. In December 1942 the appellant proceeded to Shanghai where he stayed throughout the Japanese war and dealt in all sorts of commodities, acquiring considerable wealth while he did so. The position of currency in China being very uncertain at that time, the appellant decided to buy gold which he did in the form of gold bars. He deposited a good portion of the gold with a bullion firm known as C. W., the proprietor of which was one P. T. S. This bullion firm had facilities for transferring gold in the sense of transferring its value from Shanghai to Hong Kong. Because of the unstable political situation in China the appellant decided to transfer his gold and Hong Kong currency to Hong Kong. This he did with the assistance of his friend P. T. S. who was also the managing director of the Y. H. Bank of Hong Kong. The gold and currency were collected from the Y. H. Bank by one T. E. P. who was the manager of K. H. H. of Hong Kong. During the period from January to July, 1948 there was transferred by the bullion firm of C. W. to the Y. H. Bank a total of HK taels 14,569.6 weight of gold, and a total of HK $533,125 representing a total value of approximately HK $5,000,000 or Straits $2,500,000. In his capacity as agent or employee of the appellant, T. E. P. looked after his assets and protected his interests generally. The gold which T. E. P. collected from the Y. H. Bank was deposited with the C. K. Bank. Part of the Hong Kong currency remitted from Shanghai was used to buy more gold which was also deposited by T. E. P. with the C. K. Bank.